IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.453 of 2000

Decided on : March 24, 2009

M/s Endee Woolen & Silk Mills (P) Ltd.

... Petitioner

VERSUS

Sanjay Goel

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Ms.Jaishree Thakur
Advocate for the petitioner.

Mr.Ashit Malik, Advocate assisted by
Mr.Ashish Aggarwal,
Advocate for the respondent.

A.N.JINDAL, J.-

The prime question involved in this petition is, "whether the revisional court could be influenced by the documents in the hands of the accused and proceed to decide the case".

The facts in the background of the case are that M/s Rossini International was a firm represented by Sanjay Goel – accused/respondent (herein referred as `accused'), who in order to clear the outstanding liabilities on behalf of the Firm, issued a cheque No.663209 dated 20.4.1996 (Ex.PB) drawn on State Bank of India, Pilkhuwa out of A/C No.C/C-3/444-64 to the M/s Endee Woolen & Silk Mills Pvt.Ltd., Mathura Road, Faridabad – complainant/petitioner

(herein referred as `complainant') to the tune of rupees four lacs. On presentation of the same, it was dishonoured and was returned with the remarks, "payment has been stopped". Communication regarding the dishonouring of the cheque was received by the complainant on 9.11.1996 and, thereafter, within the stipulated time of 15 days, he issued notice dated 22.11.1996 (Ex.PE), requesting the accused to make the payment. However, the accused submitted a reply on 6.12.1996, but did not make the payment. Thereafter, the complaint was filed under Section 138 of the Negotiable Instruments Act on 20.1.1997. The Trial Court after recording the preliminary evidence, issued process against the accused/ respondent vide the summoning order dated 28.5.1997, which was challenged by him before the Sessions Judge, Faridabad, who after taking into consideration the photocopy of the registered envelope addressed to the accused observed that the complaint has been filed after the expiry of the stipulated period of 45 days from the receipt of notice, accepted the revision petition and dismissed the complaint. Hence, this petition by the complainant.

Arguments heard. Record perused.

There is no denying a fact that the cheque (Ex.PB) was issued on 20.4.1996 for a sum of rupees four lacs, which on presentation was returned vide memo dated 10.10.1996(Ex.PC) and the intimation regarding the dishonouring of the cheque was sent with the remarks, "payment has been stopped", which was received by the complainant on

9.11.1996 vide memo dated 6.11.1996 (Ex.PD). A notice was issued on 22.11.1996 (Ex.PE) to the accused, who submitted a reply on 6.12.1996 and, thereafter, the complaint was filed on 20.1.1997, whereas, it could be filed upto 11.1.1997. Learned Sessions Judge fell in error in discussing the photocopy of the registered envelope addressed to the accused in order to ascertain that the notice was received by the post office, Pilkhuwa on 27.11.1996, for the reason that the court at the stage of summoning has to see prima facie case for issuing the process on the basis of the complaint and the evidence before it and need not to go deep into the merits of the case and decide as to whether the accused is liable to be convicted or acquitted. Secondly, at the revisional stage, no documents in the hands of the accused in support of the plea set up by him, are to be taken into consideration.

Essentially, at the revisional stage, the Court has to examine illegality, irregularity or impropriety of the impugned order on the basis of the evidence before it and the interference by the revisional court is permissible if on the bare facts as brought forth before the Trial Court do not, prima facie, disclose the ingredients of an offence, which has been alleged against the accused or that the allegations were absurd or inherently improbable, too remote to connect the accused with the crime or the discretion exercised by the Magistrate was capricious and arbitrary. A similar proposition arose before the Apex Court in case **Smt.Nagawwa vs. Veeranna Shivalingappa Konjalgi**, *AIR 1976 SC 1947*, wherein, the Apex Court observed as under:-

"(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible, and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction or absence of a complaint by legally competent authority and the like."

Following the aforesaid judgment, Allahabad High Court, while discouraging the acceptance of the documents from the accused, to be produced by him at the stage of defence, in case of **Dev Narain Dev vs. State of U.P.**, *2001(1) RCR(Crl.) 325* observed as under:-

"Applying the aforesaid tests to the present case, I

would hold that none of those circumstances existed for the learned Sessions Judge to upturn the order of the learned Magistrate and put an end to the criminal proceedings. To my mind, he overstepped his jurisdiction by allowing the accused persons to bring on record certain documents in support of their defence plea and relying upon those documents he appreciated the evidence as if he was exercising power of the appellate Court. It may be stated, when an order of cognizance is challenged in revision, it is impermissible for the Sessions Judge in each and every case to look into the documents produced by the accused in support of his defence plea and quash the order being influenced by those documents notwithstanding the statements of the complainant and his witnesses who supported the case as narrated in the complaint. In certain circumstances, however, the Revisional Court would be justified to have a glimpse over the documents produced by the accused (sic) has been initiated on a distorted version to wreck vengeance."

It is not the case of either distorted version or appears to have been filed to wreck vengeance. While examining the case from another angle, the accused before the revisional court took the plea that the complaint was filed beyond limitation, while presenting a photocopy of the registered envelope, stating that it was the said notice, which

reached the post office, Pilkhuwa on 27.11.1996, therefore, the complaint having been filed after 45 days i.e, on 20.1.1997 was beyond limitation. Here, it may be observed that though the notice reached the post office, Pilkhuwa on 27.11.1996, but there is nothing to show as to when it was served upon the accused. Thus, in that manner also, mere reaching of the notice in the post office on 27.11.1996 is not of any consequence as to take the case beyond limitation, but at the same time, it would be essential to refer that the accused submitted the reply to the notice, which appears to be dated 6.12.1996. However, there is no such evidence on the record to show as to when this reply was received by the complainant. The cause of action in such circumstances of case, would arise only when the refusal to make the payment is made by the accused by virtue of his reply, which the complainant could come to know only on receipt of the reply. All these documents were to be proved by the complainant by leading evidence at the stage of trial, but the Court appears to be in a hurry to bury with the order of summoning at the revisional stage by taking the documents of the accused into consideration at the revisional stage, which was not proper and the same could only be produced by way of defence. The complainant is still to make clear as to when he received the reply dated 6.12.1996. If he had received the same by 20.12.1996, then certainly the complaint having been filed on 21.1.1997 is within limitation.

The records further reveal that the notice of accusation had already been served upon the accused and the case was fixed for evidence. Thus, it would be expedient in the administration of justice to

decide the case on merits than to put it in the dustbin at the very thresh-hold of the trial.

Resultantly, the present petition is allowed and the impugned order dated 8.9.1999 is set aside and that of the Trial Court dated 18.1.1999 is restored. The complaint is restored and the parties are directed to appear before the Trial Court on 2.4.2009, which shall proceed in accordance with law.

March 24, 2009 (A.N.JINDAL)
`gian' JUDGE